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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/612,821	07/10/2000	Paul C. Zimmer	ZMM-101	9025

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EXAMINER

TORRES, MELANIE

ART UNIT	PAPER NUMBER
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 9

Application Number: 09/612,821
Filing Date: July 10, 2000
Appellant(s): ZIMMER, PAUL C.

MAILED

JUL 24 2002

GROUP 3600

John R. Benefiel
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 8, 2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

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(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-5 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

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1,427,786

Deaton

9-1922

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hallam in view of Deaton.

Re claims 1 and 4, Hallim teaches a promotional calendar comprising a series of pages each imprinted with a respective day of the year and held together to allow turning or tear off of each page (at 3), each page printed with an identifier of an enterprise to be promoted (at 7B). However, Hallim does not teach wherein each page is prominently printed with the name of a person to personalize the calendar. Deaton teaches a promotional calendar that is personalized with an individual's name (at 15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a personalization on the calendar of Hallim in view of the teachings of Deaton as it is a well known marketing technique to facilitate a relationship with customers by including a personalization on a promotional gift.

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Re claim 3, Hallim as modified teaches wherein only the date is printed on each page to provide a perpetual calendar.

Re claims 2 and 5, Hallim does not teach a different text message relating to the enterprise on each page of the daily calendar. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have printed different messages relating to a business on the calendar of Hallim so as to provide information about the enterprise to the potential customer. Further, the use of customized calendars providing personalizations and organizational logos and information is well known in the art.

(11) Response to Argument

3. Applicant's arguments filed November 27, 2001 have been fully considered but they are not persuasive.

Re claims 1 and 4, Applicant argues that Hallam in view of Deaton do not teach wherein both a personalization (name of a person) and the name of an enterprise appear on each sheet of the calendar.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant argues that Deaton does not teach a personalization on each page or

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devote a separate page to each date. As specifically described in the **35 U.S.C. 103(a)** rejections above, Deaton is relied upon merely as a **teaching** of a personalization on a calendar which is also a well known feature in the art and not for the features upon which Hallim is relied upon. See the previously cited prior art (U.S. Patent No.s 4,270,123, 1,153,543) for further examples of calendars with text messages including personalizations. Hallam is the **base reference** which teaches both a separate page for each date and a identifier of an enterprise on each page (7B) specifically discussed in column 1, lines 23-26 and 34-36. Taken in combination, it would have been obvious to one of ordinary skill in the art to have combined Hallam and Deaton to have created a calendar with both an identifier of an enterprise and the name of a person as Deaton specifically describes personalizing a calendar with "the name of the person to whom the calendar is presented with the name of the donor and such advertising matter as may be desired to have appear thereon" in column 3, lines 7-12.

Applicant has *continually attacked the references individually* throughout the prosecution of the application and refuses to acknowledge that the 103 rejection is proper in all respects especially as the Deaton reference provides a specific recitation of a teaching on column 3, lines 7-12 wherein personalizations may be used for promotional purposes. It is acknowledged that Hallam does not teach the personalization. This is why the examiner has relied upon Deaton for the teaching. The Deaton reference is also attacked individually as not teaching wherein each page is devoted to date and personalized. Deaton is not relied upon for these features as the Hallim reference teaches the distinction of each page of the calendar. As explained

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repeatedly, Deaton teaches the personalization and identification of an enterprise on a calendar for promotional purposes. Further, the examiner feels that the subject matter of this application is extremely well known in the art. For these reasons, it is unclear to the examiner where the novel feature of this invention lies.

Applicant argues that Hallam does not describe a calendar to distribute to users. Rather, a collection of sheets, each printed with a date and having a space where advertising matter may be inserted. The examiner feels that "a collection of sheets, each printed with a date" as argued by applicant is a calendar. Further, the examiner notes that the assignee of the prior art Hallam reference is "Historical **Calendar** Advertising Company" stated at the top of the first page. Also, its use in a shop window would inherently be of an advertising nature though this use is argued otherwise by applicant.

Re claim 2, Applicant merely claims wherein a differing text message appears on each calendar page. Though this would be inherent in a calendar as the date would change on any perpetual calendar including that of Hallam, Hallam teaches wherein in space 7a, a different text message relating to a picture is changed daily. This is illustrated in Figures 1 and 2 and stated specifically in column 1, lines 31-34. Re claim 5, applicant is more specific claiming that "the different message relating to the enterprise on each page of said daily calendar." As stated above, Hallim teaches wherein a different text message is displayed daily and it is the examiner's position that it would have been obvious to have had the message directed specifically to an enterprise related topic.

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It is the examiners position that Hallam teaches a promotional calendar comprising a series of pages each printed with advertising matter desired by the user. Deaton also teaches the printing of advertising matter on a calendar and further teaches personalizing the calendar for marketing purposes in the cited sections above. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

MT
July 22, 2002

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Art Unit 3613
7/23/02

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